UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555-jmp

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 30, 2011

10:09 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Amended motion (i) for Approval of the Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement Hearing, (ii) Establishing Solicitation and Voting Procedures, (iii) Scheduling a Confirmation Hearing, and (iv) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Joint Chapter 11 Plan [ECF No. 18126]

Transcribed by: Aliza Chodoff

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtors
700 Louisiana
Suite 1600
Houston, TX 77002

BY: ALFREDO R. PEREZ, ESQ.
LORI FIFE, ESQ.
HARVEY MILLER, ESQ.

DAVIS POLK & WARDWELL
Attorneys for Lehman Brothers International (Europe)
450 Lexington Avenue
New York, NY 10017

BY: MARSHALL S. HUEBNER, ESQ.
BRIAN RESNICK, ESQ.

BROWN RUDNICK LLP
Attorneys for LBI Ad Hoc Group
Seven Times Square
New York, NY 10036

BY: MARTIN S. SIEGEL, ESQ.
REBECCA L. FORDON, ESQ.

MILBANK, TWEED, HADLEY & MCCLOY LLP
Attorneys for Creditors' Committee
One Chase Manhattan Plaza
New York, NY 10005

BY: EVAN R. FLECK, ESQ.
DENNIS F. DUNNE, ESQ.
DENNIS C. O'DONNELL, ESQ.

KLESTADT & WINTERS, LLP
Attorneys for OMX Timber
570 Seventh Avenue
17th Floor
New York, NY 10018

BY: CARRIE V. HARDMAN, ESQ.

LATHAM & WATKINS LLP
Attorneys for Bundesverband Deutscher Banken
885 Third Avenue
New York, NY 10022

BY: MARK A. BROUDE, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: TRACY HOPE DAVIS, UST, ESQ.
ANDREA B. SCHWARTZ, ESQ.

WHITE & CASE LLP
Attorneys for Ad Hoc Group of Lehman Brothers Creditors
1155 Avenue of the Americas
New York, NY 10036

BY: CHRISTOPHER SHORE, ESQ.
GERARD UZZI, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for Centerbridge Partners
One Bryant Park
New York, NY 10036

BY: PHILIP C. DUBLIN, ESQ.
ABID QURESHI, ESQ.

VINSON & ELKINS LLP
Attorneys for Shinsei Bank
666 Fifth Avenue
26th Floor
New York, NY 10103

BY: DOV KLEINER, ESQ.

BINGHAM MCCUTCHEN LLP
Attorneys for Wells Fargo as Trustee
399 Park Avenue
New York, NY 10022

BY: MICHAEL J. REILLY, ESQ.

VINSON & ELKINS LLP
Attorneys for Deutsche Bundesbank
666 Fifth Avenue
26th Floor
New York, NY 10103

BY: JANE LEE VRIS, ESQ.

KRAMER LEVEIN NAFTALIS & FRANKEL LLP

Attorneys for Rutger Schimmelpenninck and Frederic Verhoeven as Trustees for Lehman Brothers Treasury Co., BU

1177 Avenue of the Americas

New York, NY 10036

BY: THOMAS MOERS MAYER, ESQ.

JENNIFER R. SHARRET, ESQ.

HUGHES HUBBARD & REED LLP

Attorneys for SIPA Trustee

One Battery Park Plaza

New York, NY 10004

BY: JAMES B. KOBAK, JR., ESQ.

DAY PITNEY LLP

Attorneys for Fidelity National Title Insurance Company

One Audubon Street

New Haven, CT 06511

BY: JOSHUA W. COHEN, ESQ.

VENABLE LLP

Attorneys for Danske Bank A/S London Branch

1270 Avenue of the Americas

25th Floor

New York, NY 10020

BY: CAROLLYNN H.G. CALLARI, ESQ.

SUSMAN GODFREY L.L.P.

Attorneys for Mason Capital Management

1201 Third Avenue

Suite 3800

Seattle, WA 98101

BY: DREW HANSEN, ESQ.

MAYER BROWN
Attorneys for Sumitomo Mitsui Banking Corporation
1675 Broadway
New York, NY 10019

BY: JEFFREY G. TOUGAS, ESQ.

SNR DENTON US LLP
Attorneys for Bankhause
1221 Avenue of the Americas
New York, NY 10020

BY: PATRICK C. MAXCY, ESQ. (TELEPHONICALLY)

CHAPMAN & CUTLER LLP
Attorneys for US Bank
330 Madison Avenue
34th Floor
New York, NY 10017

BY: FRANKLIN TOP, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

HOLLY CLACK, Alvarez and Marsal (Telephonically)

ISAAC PACHULSKI, ESQ., Stutman, Treister & Glatt (Telephonically)

P R O C E E D I N G S

THE COURT: Be seated, please, those who can. Before Mr. Miller starts, I'm going to make a plea for the good of the room that those people who do not have foreseeable speaking roles today please consider going either into room 608 or Judge Lane's courtroom upstairs. It's already warm in here, and it's going to get warmer as we continue breathing. So if -- this is a test of your civic responsibility. If you don't have speaking roles and aren't needed to assist someone with a speaking role, I ask you to go into another room where you will have complete ability to hear and observe.

Okay, it looks like it's going to be a very long day since no one has moved.

MR. MILLER: I hope not, Your Honor.

THE COURT: Okay.

MR. MILLER: Good morning, Your Honor. Harvey Miller, Weil Gotshal & Manges, on behalf of the debtors.

It has been quite a week, Your Honor. August 24th; an earthquake, August 27th and 28th; a one in a hundred years hurricane. And today is a landmark date in the continuing saga of Lehman Brothers and its decline and fall. As I waited to pass through security this morning, Your Honor, I thought of the remarks of Winston Churchill. When he was asked to comment on the status of World War II at the end of 1942, he replied it was not the end. It was not even the beginning of the end, but

it was perhaps the end of the beginning.

It's the debtors' sincere hope and belief that today is not the end of the beginning, but rather the beginning of the end of these unique and extraordinary Chapter 11 cases. And I'm sure there are many in the audience that would agree with that. The debtors are before the Court today pursuant to Section 1125 of the Bankruptcy Code, requesting the approval of the debtors' revised and amended second disclosure statement and related solicitation procedures for their joint Chapter 11 plan.

It has been almost three years since the commencement of these historic cases and the chaos that engulfed the global financial markets and the economy. As many will recall, the early days of these cases were, in many respects, horrendous as fear and panic ruled the financial markets and created an environment that also exacerbated the administration of these cases. Initially, the debtors had little access to reliable financial information. In many foreign jurisdictions there was a race to the courthouse and the seizure of Lehman assets; a process that resulted in eighty foreign insolvency proceedings under the supervision of receivers and administrators.

At the same time, while the sale and transfer of Lehman's North American capital markets business to Barclays Capital Corp that occurred and was approved within the first five days of the commencement of the LBHI Chapter 11 case. And

on the first day of the Securities Investor Protection Act proceedings for Lehman Brothers Inc. the debtors' U.S. broker dealer affiliate resulted in significant benefits to customers of LBI and allowed the SIPA trustee and Barclays Capital to expeditiously return approximately ninety-two billion dollars to customers at LBI as well as preserve asset values. It denuded the Chapter 11 debtors of operating personnel.

Essentially, all of the Lehman employees in the metropolitan area were transferred to Barclays Capital. To meet the challenge the debtors engaged Bryan Marsal of Alvarez and Marsal as their chief restructuring officer and Alvarez and Marsal as the debtors' financial advisers and management support. Under Mr. Marsal's leadership, Alvarez and Marsal quickly introduced hundreds of A&M personnel to fill the roles of corporate and operational management and to collect and administer and preserve the assets and value of the debtors' estates.

There was a precarious and hazardous period of sustained pressure, anxieties, and indeed chaos and doubts. Nonetheless, with the support of teams of skilled professionals and the statutory general unsecured creditors' committee and its professionals, Mr. Marsal and A&M created order out of chaos and set the course for an extremely efficient and beneficial administration of the Chapter 11 cases. Some might say that Mr. Marsal was suitably rewarded by his appointment as

chief executive officer of the debtors, and A&M by the appointment of John Suckow as the debtors' president and chief operating officer.

The bankruptcy process started in September 2008 with the stabilization of the administration of the debtors' assets and operations, the collection and preservation of data and information and the creation of financial statements from the information available as well as identifying many issues and alleged conflicts that permeated the Chapter 11 cases in terms of claimed rights, asset ownership, avoidance actions, jurisdiction, and ultimately finding the potential solutions of the issues that would allow the cases to get to the point of making distributions to holders of allowed claims.

It has not been a cake walk. As the Court has observed in the many matters that have been heard in this courtroom, proceedings which Your Honor has noted just presented the tip of the iceberg. Despite the many obstacles and challenges, it is as a result of the dedication of the debtors' team led on a day-by-day basis by Mr. Suckow and ably supported by the ever persistent Daniel Herman and a remarkable host of A&M and Lehman persons, guided by knowledge, ingenuity and innovative skills of professionals and particularly, Your Honor, I would note an inspired team led by my partner, Lori Fife, and her band of merry pizza eating partners and associates and paras and brought together the different

claimant constituencies that have moved these cases to the beginning of the end.

I would be remiss if I did not also acknowledge the significant contributions of the unsecured creditors' committee, its members, and retained professionals, particularly Milbank, Tweed as well as the representatives and members of the ad hoc group of LBHI senior creditors and its attorneys, and Mr. Uzzi and White & Case and the so-called OPCO creditors, many of the foreign representatives and various individual claimants, and all of their retained professionals; each of whom joined in the good faith intensive efforts that led to the development and formulation of the proposed plan, a plan that the debtors and many of the more substantial claimants in groups believe should be considered for acceptance by all impaired creditor claimants.

As a result of the hundreds of hours expanded and the extreme efforts of many efforts, on July 1, 2011, the debtors filed their second amended disclosure statement and a proposed second amended Chapter 11 plan. However, that was not the end of the dedication and extended efforts. Subsequent to the filing date, the negotiations continued right up to the beginning of this hearing to refine the disclosure statement and proposed Chapter 11 plan and to resolve objections to the disclosure statement. The last filed documents in relation to this hearing, Your Honor, were made on October 24th.

Since that date, there have been additional changes in the disclosure statement and in the plan, which we will distribute before this hearing is over, Your Honor. I would just allude to the changes that have been added since August 24th. There has been added a description in the disclosure statement in the Singapore and LBT settlements at pages 31 and 14 -- Exhibit 14E-1 and 14G-1 of the changed places -- pages blackline. The Singapore and LT -- LBT settlement agreements are attached as Exhibits 14F and 14H, respectively. There has been added disclosure requested by Fannie Mae that provides that Fannie Mae reserves the right to assert that 2.7 billion dollars of its 19 billion dollar should be treated as a priority claim under the Hera, H-E-R-A, statute, and that's at page 54 and Exhibit 4-8 and 5-10. Added disclosure requested by LBF that it believes the setoff provisions of section 13.5 of the plan impinge on their setoff rights has been set out at page 72 of the changed pages.

Added disclosure has been requested by LBF and incorporated that in their belief is that the plan cannot be confirmed if section 8.15 of the plan is not modified and that section 8.15 violates Section 1123(a)(4) of the Bankruptcy Code and the principles of comedy at page 107 of the changed pages. In the description of the claims included in each class debtors have moved guaranteed claims based on prime brokerage accounts from class 5 senior third party guaranteed claims to class 9a

third party guaranteed claims based on further analysis and determination that such claims do not qualify as senior debt under the relevant indentureds. And that's at pages 82 and 85 of the blackline.

Added clarifications have been made to the disclosure requested by class action plaintiffs regarding their claims and classification, which is set forth at page 87 of the blackline. Clarifications have been made to the maximum distribution section to clarify that the provision relates to the satisfaction of a claim and not a holder of a claim, and that's pages 108 and 109 of the changed pages. Added disclosure has been made to provide that any additional settlement agreements entered into by the debtors with foreign affiliates will be included in the plan supplement, and that's at page 122 of the changed blackline. Further, there has been added the Singapore entities and LBT -- I'm sorry, let me rephrase that. There has been added to the plan support provisions the Singapore entities and LBT. They have executed plan support agreements, and changes will be made to pages 20-2 of the blackline.

In addition, just ten minutes ago, agreement was reached with Wells Fargo Bank as acting on behalf of OMX and objector to, in effect, withdraw the objections based upon an agreement and language to be added. Wells Fargo and OMX have asserted that their claims, to the extent allowed, should be properly classified in LBHI class 3. The debtors are reviewing

the classification of these claims and have agreed to address that issue prior to the voting deadline.

Changes to the plan, Your Honor, we have incorporated the Singapore settlement agreement into the plan. The agreement provides the allowance of certain claims among the Lehman Singapore entities against the debtors and certain nondebtor affiliates. In addition to Singapore, entities have agreed to support the plan, and that's in section 6.5. We have incorporated the LBT settlement. The debtors have incorporated the LBT settlement with the LBT trustees. The agreement has been finalized and executed between the parties. The settlement provides for the allowance of LBT senior intercompany claims against LBHI in the amount of 34.548 million dollars as well as the claims of LBSF and LBCS against LBT. In addition, the LBT trustees would agree to support the plan, and the debtors have agreed to support and facilitate the LBT trustees' restructuring in the Netherlands. And that'll be in section 6.5(b)(3).

Additional settlement agreements with foreign affiliates and creditors; the debtors expect to finalize additional settlements with their foreign affiliates and other creditors and will incorporate additional language to provide that such settlements will be included in the plan supplement that is to be filed at least ten days prior to the voting deadline, which is approximately October 25. That will be

section 6.5.

In addition, the debtors have clarified section 8.13 of the plan regarding maximum distributions to make clear that the satisfaction in full is tied to the claims and not holders. Further, we have made an additional change in the plan in respect to the fee committee to satisfy a comment of the United States Trustee. The debtors will incorporate the role of the fee committee post-effective date as agreed. The fee committee will continue to exist for the purpose of reviewing professional fees incurred prior to the effective date, including final fee applications. And that will be section 15.1(b).

So, Your Honor -- let me just get back to where I was, Your Honor. Just a one more minute, Your Honor. Notice of today's hearing in accordance with the Bankruptcy Code and related rules and requirements was given to approximately 110,000 claimants and entities. Objections to the approval of the disclosure statement were required to be filed by August 11, 2011. As the Court may recall, approximately 67,000 claims were filed against the debtors, asserting claims aggregating approximately 1.2 trillion dollars. Over 180 omnibus motions objecting to claims have been filed and heard. As a result, approximately 22,500 claims aggregating approximately 223 billion dollars that either have been withdrawn, reduced, reclassified, disallowed or expunged.

The debtors project that the aggregate amount of allowed claims will approximate 360 billion dollars. In connection with the disclosure statement and prior to the objection deadline, certain claimants informed the debtors that they had questions and potential objections to the approval of the disclosure statements and the solicitation of acceptances or rejections of the plan. Wherever possible, Your Honor, meetings and conferences were established to review and resolve potential objections through clarification, additional language or otherwise. A relative high level of success was achieved. By the end of the objection deadline, from the 110,000 entities served with notices of the motion only 17 claimants and the United States Trustee filed objections to the approval of the disclosure statement.

Three claimants filed joinders to certain of the objections. And of the seventeen objections filed, four objections are made by pro se claimants who are objectors. Since August 11, 2011, and as a result of further meetings, conferences and communications, eight of the seventeen objections, including the objections of the U.S. Trustee, have been substantially resolved, at least to the extent that they purported to raise issues as to the approval of the disclosure statement or deferred to the confirmation hearing as to confirmation issues. In all cases, the potential objector or actual objector is reserving any and all rights to pursue its

objections and any other objections it may conjure up at the time the Court considers the confirmation of the plan.

In addition to the unsecured creditors' committee, Your Honor, the ad hoc group of LBI senior creditors and approximately forty-seven claimants, and that number will increase, Your Honor, asserting well over one hundred billion dollars in claims against the debtors and who are parties to plan support agreements have filed pleadings in support of the approval of the disclosure statement.

The issue to be determined by the Court today if whether the disclosure statement contains adequate information in light of the nature and history of the debtors and the condition of their books and re -- books and records that would enable a hypothetical investor typical of the holders of claims or interest in these cases to make an informed judgment about the plan. In making that determination, the Court is to consider the complexity of the cases, the benefit of additional information to creditors and other parties-in-interest, and the cost of providing additional information. As the Court has recognized, these are extremely complex cases. Further, the great -- all of the claimants are very sophisticated creditors. Indeed, many of them acquired their claims after the commencement of the Chapter 11 cases as distressed day traders and speculators.

They are very conversant with financial transactions,

credit analyses and the like, particularly as they related to the debtors. As noted in the support pleading filed by the unsecured creditors' committee, the representative of the general creditor body, and all of the respective constituencies, it is very satisfied and comfortable with the level of disclosure contained in the disclosure statement as being compliant with the requirements of Section 1125 of the Bankruptcy Code.

The costs of preparing the disclosure statement has been substantial. The efforts to resolve objections, while successful in certain cases, was costly and required extended participation by the debtors' financial and, to an extent, the operational management as well as many of their professionals. The blackline disclosure statement, which was filed on August 24th, has -- illustrates the extensive additional language that has been incorporated into the disclosure statement since July 1, 2011, as a result of negotiation with parties-in-interest. As such, the disclosure statement is compliant with Section 1125 of the Bankruptcy Code.

Approval of the disclosure statements does not result in any substantive relief. It does not determine substantive issues relating to the confirmation of the plan. Unfortunately, in practice, as involving the bankruptcy arena, of using Section 1125 hearings as the bully pulpit by disgruntled, unhappy, and disappointed creditors and interest

holders to vent and broadcast their objections to a pln. The practice has been recognized by courts as being counterproductive to the orderly process contemplated by Chapter 11. Recently, in connection with the approval of the stipulation order regarding plans and stay of discovery on July 20, 2011 the Court recognized the problem and cautioned attorneys not to use that hearing as a soap box and make statements about positions that they might assert at some future hearing in connection with some future matter to be heard, such as the confirmation hearing.

In the Chapter 11 cases of General Motors Corporation, prior to the 11 -- Section 1125 hearing, Judge Gerber advised claimants and others and their attorneys that objections directed to the confi -- to the confirmation of the General Motors plan would not be allowed or considered in determining the approval of the disclosure statement. Many other courts follow that principle, and the authorities have cited in the debtors' response at paragraph 7 and 8. Despite this general principle that applied in this district, a majority of the remaining of the active objections to the debtors' disclosure statement, although cleverly worded, raise confirmation issues that should be deferred to the confirmation hearing. The debtors' amended response to the filed objections identifies those objections that present confirmation issues and, as such, should be deferred to the confirmation hearing.

Those objections should not be allowed to delay the approval of the disclosure statement, which hopefully will bring these cases to a point of making distributions to holders of allowed claims and to the closing of these unique cases. As the district court noted in, in re Royal Comp, the determination of what is adequate information is subjective and made on a case-by-case basis. The determination is largely within the discretion of the bankruptcy court. In that context, as the Court is aware, a principle foundation of the debtors' plan is the compromises incorporated in the plan that would significantly accelerate the conclusion of these cases and largely avoid extensive, complex and expensive litigation of issues, including those relating to the doctrine of substantive consolidation.

Inherent in the confirmation of the plan is a necessity that the Court approve these compromises. Nevertheless, a number of objections focus on the propriety of the compromises and in some instances demand justification for the proposed compromises. Such objections patently are direct to the substantive issue of approval of the compromises. However, as stated, approval of the disclosure statement does not equate to approval of the compromises. And the debtors are not requesting or seeking to limit in any way, to constrain a particular objectors in raising, prosecuting proper objections to the compromises and the confirmation of the plan at the

appropriate time.

As noted in the Waterville, Tennessee -- Waterville time share cited in the response, the wisdom of the compromise in that case, which was a critical element of the Waterville claim, was a prime issue for the confirmation hearing and not an objection to the approval of the disclosure statement in that case. Similarly, in other cases involving plans that incorporated major and integral compromises, objections to a disclosure statement based upon a lack of justification for the compromises or the failure to include a professional evaluation of the compromise were rejected as premature as the particular disclosure statements contained a concise statements of the existing issues and did not require speculation as to future uncertainties, including the consequences of a potential outcome of litigation. Essentially, these cases hold that a disclosure statement or the hearing for approval is simply not the place to argue various theories of recovery to demonstrate results of what if kinds of proof. And I would refer Your Honor to in re Texas Extrusion Corp at 844 F.2d 1142, 5th Circuit, 1988, Colorado & Mountain Express v. Aspen Limousine Service in 193 B.R. 325, District Court Colorado, 1996, Cadle, C-A-D-L-E, Company of Roman Two Inc. v. PC Liquidation Corp, 383 B.R. 856, Eastern District of New York, 2008, in re CDECO, C-D-E-C-O, Maritime Construction Inc. 101 B.R. 499, Bankruptcy Northern District of Ohio, 1989.

The debtors' disclosure statement, consisting of over 150 pages of text without exhibits, contains more than adequate information consistent with Section 1125 of the Bankruptcy Code. Therefore, in the exercise of the Court's discretion, it should be approved and impaired claimants given the opportunity to accept or reject the plan. Attached to the disclosure -- to the response, Your Honor, is Exhibit A, a chart prepared by the debtors that succinctly sets forth each filed objection and debtors' responses to the particular objection. As a result of the pre-hearing meetings and conferences, the following objections have been resolved by consent, and where appropriate by incorporating into the disclosure statement language as set forth in the blackline of the disclosure statement that was filed on August 24th or described today.

And those objections that have been withdraw -- they are withdrawn as they relate to the approval of the disclosure statement or by agreement that the objections would be reserved for the confirmation hearing. The withdrawing objections or withdrawing objectors, Your Honor; the Wilmington Trust Company, which is listed as number 1 on the chart, which alludes to the pages that have been changed.

The next one is Liberty View, which -- represented by Mr. Etkin and which he has agreed to reserve his objections to the confirmation hearing.

Numbers 3 and 4, which are both lead plaintiffs in

consolidated class actions, we have added language describing those actions to the satisfaction of Mr. Etkin. And I would point, Your Honor, that number 4 is the subject of a pending motion to be heard by Your Honor in September to approve the settlement of that action in consideration of ninety million dollars that is paid out insurance proceeds and which will, if approved, will result in the release to the debtors.

Number 5, Your Honor, is PriceWaterhouseCoopers AG in Zurich. We have agreed to incorporate some language that is -- have been blacklined.

And jumping over, Your Honor, to number 16; the objections -- extended objections, let me say, Your Honor, of the United States Trustee have been resolve pursuant to agreements with the Office of the United States Trustee. There has been substantial additions to the disclosure statement and to the plan, and also the U.S. Trustee reserves all objections and rights to add objections at the appropriate time in connection with the confirmation hearing.

And going back up to number 7, Your Honor, which I referred to as BDD -- BDB, called Bundersverband Deutscher Banken likewise, Your Honor, reserving objections to the confirmation hearing.

And finally, Your Honor, the resolution that was reached just five minutes before the commencement of this hearing, number 15, Wells Fargo Bank Northwest, and that

includes the joinder OMX Timber Finance. The language that I read into the record earlier during this hearing, Your Honor, resolves that objection so far as it relates to the approval of confirmation hearing.

So, Your Honor, there are nine remaining objections, of which four of those objections are made by pro se objectors. And if we go through this chart, Your Honor, the first objection that is still outstanding is number 6, which is the objection with Fidelity. This objection, Your Honor, relates to coverage on insurance policies. There are, as I understand, Your Honor, literally maybe thousands of these polices. Most of them are title insurance policies. And the objection states that the debtors have failed to identify the insurance policies to be assumed. The debtors have provided that insurance policies, to the extent they constitute executory common -- contracts, shall be deemed assumed under the plan. It's our understanding, Your Honor, that one of the issues is the contention by Fidelity that in some way assumption made preclude the insurance companies from denying coverage.

The debtors have agreed, Your Honor, that -- and acknowledge that the plan and the assumption, if there should be an assumption -- and I might say, Your Honor, we're not sure that these are executory contracts. In most cases, these are fully paid up insurance policies. In any event, that if there is assumption it shall not foreclose Fidelity from raising and

denying issue -- denying coverage in any appropriate proceeding. I don't know if that would satisfy Fidelity, but that's what the debtors are prepared to do, Your Honor. As to the objections in connection with Stern v. Marshall, we submit that that is a confirmation objection. And the assumption and assignment procedures of the plan are not adequate. That, again, Your Honor, we would submit is a confirmation issue.

THE COURT: Let me just break in and try to get my bearing as to where we are in this process. In identifying a variety of objections to the disclosure statement that have been resolved, unless somebody has a problem with what you've said, I assume that's off the agenda for purposes of discussion. And I've kind of checked that off in the resolved column. But as you're now going into this apparently alive objection, unless your comments resolve the objection, of Fidelity National Title Insurance Company, I'm not sure whether we're identifying the live objections to be addressed when you're done with the list or whether we're going item-by-item and, in effect, going into the specific objections.

I would prefer to defer going into the specific objections on the merits until after you have completed, in effect, your status report. I'd then like to give major parties-in-interest who have supported the disclosure statement, including the creditors' committee and the ad hoc committee, who filed reply papers along with you, a chance to

say anything if they choose to. And once we're done with that, I'd like to take stock as to where we are in terms of the order of play for the day, particularly since there are so many people who are standing and are in overflow rooms.

If this is going to be a prolonged process, we're going to need to talk about breaks, lunch, and when we come back from lunch so as not to disable the elevators for other judges who have hearings in the building today. And additionally, to the extent that we're going to have an admonition from the bench, which is going to limit confirmation objections, I'm going to do that. It's just a question of when I do that. But before we get into the merits of the specific arguments, I wanted to be clear that I am not going to permit the disclosure statement hearing to become what amounts to a preview of coming attractions of what will be presented at the time of a confirmation hearing.

But to the extent that there are disagreements on the part of objectors as to the debtors' characterization of their objections as confirmation objections or concerns with respect to the adequacy of disclosure that arise within the context of an objection which the debtor has characterized as a confirmation objection, we need to hear those. And so, we're going to get to those, but we're not to going to have what amounts to a disorderly process in which I'm going to learn what I've already read anyway.

MR. MILLER: Yes, sir. We will proceed in accordance with your instructions.

THE COURT: Fine.

MR. MILLER: So the open objections, Your Honor, so to speak, are number 6, Fidelity National Title Insurance Company, number 8, Deutsche Bundesbank, number 9, Sumitomo and the Sumi Banking Corporation, number 10, Centerbridge Credit Advisers; to which there are two joinders; Anchorage Capital Group, Monarch Alternative Capital LP, number 13, Danske, D-A-N-S-K-E, Bank A/S London Branch, number 14, Mason Capital Management LLC, and then, Your Honor, the four pro se; number 18, Chris Stovic, S-T-O-V-I-C, number 19, Linda Neufeld, N-E-U-F-E-L-D, number 20, Tommy Tewalt, number 21, Gary A. Cutler.

So, as I said, Your Honor, there are nine remaining objections; of which four are the ad hocs. So there are five claim -- I should say institutional objections.

THE COURT: I'd just like to find out for purposes of planning whether or not the objections that have been lodged by pro se creditors who are not represented by counsel are being pressed today by parties who are either present in court or participating in the hearing on the telephone. Is Mr. Stovic, Ms. Neufeld, Mr. Tewalt or Mr. Cutler present?

I hear no comment. I'm assuming, as a result, that unless somebody rises to speak as to each of these that these are objections that are not being prosecuted today and will

simple be resolved on the papers.

MR. MILLER: Yes, sir.

So, Your Honor, just to conclude, it's the debtors' position that the disclosure statement is complete and contains more than adequate information to enable all of the claimants against these debtors, including the very sophisticated claimants who have been so active in these cases to make an informed to judgment to accept or reject the debtors' plan. Each of the objections that remain, we believe, have been appropriately responded to by the debtors and should be overruled. The debtors' disclosure statement and the related solicitation procedures that have been described in the motion should be approved.

I would note, Your Honor, we don't have any objections to the solicitation procedures, that I'm aware of. Unless Your Honor has some questions, I will yield to Mr. Dunne.

THE COURT: I don't have any questions at this moment.

MR. MILLER: Thank you, Your Honor.

THE COURT: Mr. Dunne.

MR. DUNNE: Good morning, Your Honor. Dennis Dunne of Milbank, Tweed, Hadley, McCloy, on behalf of the official committee of unsecured creditors.

For almost three years now the committee has worked extensively with the debtors, the various ad hoc groups that have formed in these cases, and other parties-in-interest to

achieve a consensual plan of reorganization. Through the diligence and hard work of all of these parties and after extended negotiations we believe we have achieved such a plan, and it is the debtors' plan, and it has substantial creditor support. While certain issues in connection with the plan have not yet been resolved and a few key parties are not yet on board, the committee is satisfied and pleased with the progress that has been made to date and is hopeful that a plan can be successfully confirmed before the end of this year.

In connection with the prosecution of their plan, the debtors have requested approval of the disclosure statement. The committee has evaluated the disclosure statement and the supplemental disclosures provided by the debtors in response to objections to the disclosure statement. The committee has concluded that the disclosure statement, as revised, provides information that is adequate to allow all creditors to make an informed judgment with respect to acceptance or rejection of the plan.

We believe that the committee, given its statutory obligations and fiduciary duties, is uniquely qualified to assess the adequacy of the information contained in the disclosure statement. As the Court is aware, the committee has been involved from the outset of these cases in virtually every aspect of the debtor's asset stabilization, liquidation of assets and claims reconciliation efforts. Through Court

approved, as well informal protocols, the committee's professionals have worked closely with the estates in the management and wind down of each of the debtors' discrete asset classes, including the administrations and settlement of derivative transactions, the management of the corporate long portfolio, and the administration of the real estate and private equity asset classes.

In preparation for the plan formulation and negotiation process, the committee carefully evaluated, and Milbank accorded litigation outcome probabilities to a number of threshold legal theories, including substantive consolidation, whether intercompany can be properly recharacterized as capital contributions, the scope of senior debt definitions, and subordinated debt documents, the treatment of intercompany repurchase agreements and related issues. At stake in each of these legal issues is the allocation or reallocation of distributive value under the plan.

Finally, the committee and its advisers played a critical role in developing the fundamental framework for the plan with the debtors. Thereafter, the committee was involved in crafting and negotiating the various settlements that are now embodied in the plan. And today, the committee continues to work with the debtors to address the remaining unresolved issues.

The committee recognizes that certain creditors desire more information than what is currently contained, even as modified, in the disclosure statement. However, the committee also believes because the information requested by such parties is not mandated by the statute or the case law that its inclusion is neither necessary nor desirable. From this perspective, the committee has evaluated the amended disclosure statement and concluded that no additional disclosure is required.

I will not go over the applicable legal standards, for Mr. Miller has. But suffice it to say that the committee submits that the disclosure statement provides adequate, legally sufficient, and accurate information to allow creditors to vote on an informed basis to accept or reject the plan. The disclosure statement adequately describes the history of the debtors' operations, the relevant transactions entered into immediately prior to the commencement date, the debtors' post-petition litigations strategies, claims against the various debtors' estates, the debtors' assets and their value, the tax consequences of the plan and the factual bases for the plan settlements as well as the effect of those settlements on the implementation of the plan and the distribution to creditors.

Notwithstanding, these eighteen parties-in-interest have filed objections. Through the debtors' efforts we have whittled them down to a handful. The remaining ones express a

contrary view and demand additional information on a variety of topics. The debtors, as Mr. Miller has told the Court, have in fact resolved a number of those objections by providing supplemental information. The committee submits that the supplemental information that the debtors have chosen to include in the revised disclosure statement is sufficient. In response to the U.S. Trustee's objection, for example, the debtors have provided a number of clarifications, cross references, and supplemental disclosures which should make the average creditor's review of the disclosure statement less challenging.

Similarly, in response to objections filed by certain of the securities class action plaintiffs, the debtors have provided a more thorough discussion of the pending securities class action suits as well as the available insurance coverage. Most significantly, the debtors have provided, while reserving their rights with respect thereto, an extensive discussion of the contentions of certain creditors of LCPI with respect to claims, treatment and classification and avoidance action issues they have raised.

The demands of certain other objecting parties for additional information regarding alternative Chapter 11 plans or recovery scenarios are without merit, in the committee's view. Under Section 1125, a disclosure statement need not include such information about any other possible or proposed

plan. More relevant is the fact that the debtors' plan is the only plan of reorganization currently being approved for solicitation and hopefully confirmation. The prosecution of the ad hoc and nonconsolidation plans have been held in abeyance pursuant to this Court's July 21st, 2011 order. As a result, these alternative plans are not germane to the voting decisions of creditors with respect to the debtors' plan.

Based upon its extensive knowledge of these cases and its fiduciary role in the Chapter 11 process, the committee is comfortable that the information ultimately included in the disclosure statement is adequate within the purview of Section 1125, and no supplemental information if required under applicable law.

The remaining objections, as both Mr. Miller and Your -- and the Court have noted, are objections to the confirmability of the plan. These objections that question the fairness or validity of certain provisions of the plan or claim treatment should be addressed at the confirmation hearing. Most notable among these objections are the various objections to the merits of the plan settlements. The essence of each of these objections, Your Honor, is that the debtors will be unable to satisfy Bankruptcy Rule 9019 and its standards with respect to confirmation. It is well settled that disputes of this kind relate to the confirmability of Chapter 11 plans and should be decided then at the confirmation hearing and not at

the disclosure statement.

For purposes of today, the details of the plan settlements are set forth at length in the disclosure statement, and the information provided in the disclosure statement is adequate to enable claimants to make an informed judgment. The Court should thus defer consideration of those objections until the confirmation hearing.

Finally, the committee concurs in the debtors' view that the objections to the propriety of the liquidation analysis and the solicitation procedures proposed by the motion lack merit. The liquidation analysis properly reflects the plan settlements incorporated in the plan, and it is fair and reasonable to assume that any Chapter 7 trustee acting rationally would have reached similarly equitable settlements in any hypothetical liquidation. With that, Your Honor, the committee submits that the disclosure statement provides adequate information. The information contained in the disclosure statement is comprehensive. It is accurate, and it provides creditors with sufficient information to make an informed decision on the merits of the plan.

Your Honor should overrule any remaining objections to the adequacy of the disclosure statement. And unless the Court has any questions for the committee, I conclude my remarks on behalf of the committee.

THE COURT: I don't have any questions for the

committee.

And I'll hear from the ad hoc group now. Mr. Shore.

MR. SHORE: Good morning, Your Honor. Chris Shore from White & Case, for the ad hoc group.

We stand in support of the motion to approve the disclosure statement. At the outset, we'd like to add thanks to the Court and the staff for providing immediate stability to the process, and then ultimately the framework that allowed the clients and their lawyers to get to this point. It seemed very far away back in 2008. We have filed a statement in support and a supplement. I'm not going to repeat those. I just want to address two points.

With respect to the objections as to the disclosure surrounding the settlement, the current disclosure of the underlying merits is we believe adequate and balanced right now. More disclosure of the parties' position, I think, is just going to beget more disclosure as everybody feels compelled, then, to lay out their battle plans for war that we're trying to avoid. And while we all like to advocate, I just don't think it's going to be helpful in the context of getting to confirmation. It could probably be counterproductive to the -- to consensus building.

With respect to the confirmation objections, I'm just going to add that these plan settlements are constructed around the concept of a quick and peaceful exit. To that end, we'd

ask the Court to schedule a confirmation hearing, set the deadlines, provide the framework, then, for allowing those objections to either be resolved consensually or judicially at confirmation. But we need to move forward now.

THE COURT: Okay. Apparently, this is becoming open season. I'm not sure -- before we hear from Mr. Mayer, just in the interest of good order, because I'm seeing a number of people getting in position to come to the podium, I wanted to hear before hearing from any objectors or other parties who have comments to make from those who are principle supporters of the disclosure statement. I recognize that there are any number of parties to plan support agreements that filed pro forma statements in support of the disclosure statement, which I have read. I read them to see if they were long or short, to see if they were in any way conditioned, and I paid to attention to them.

So there's no need for anyone who is a supporter of what has already been said by the debtors, the committee, and the ad hoc committee to speak. But I'm seeing Mr. Mayer here, and I know that there was a recent statement by Mr. Miller that LBT has entered into and confirmed a settlement, which is part of a plan modification. To the extent that Mr. Mayer is speaking in respect of that or other issues that would be helpful to the disclosure statement process, since he's standing, and I note him, I'm going to let him speak.

MR. MILLER: Before he does, Your Honor, I have to correct the record. I misread a series of e-mails, and I indicated to Your Honor that BDB, Bundesver -- Bundes Bank -- not Bundes Bank, the BDB had withdrawn their objection.

THE COURT: They have not?

MR. MILLER: That's incorrect, Your Honor.

THE COURT: So you read a yes as a no, a no as a yes? What did -- what -- how --

MR. MILLER: I read -- I misread it, and I thought that -- I interpreted what was said that they had withdrawn it. And Mr. Broude has advised me that's not accurate.

THE COURT: Then we will hear from Mr. Broude to the extent that --

MR. MILLER: Yes, Your Honor.

THE COURT: -- that he wishes to speak to the disclosure.

MR. MILLER: Yes, Your Honor.

THE COURT: Fine.

MR. MILLER: I also -- just to add to the record, Your Honor, I skipped over a line. I would also like to acknowledge the leadership that was provided by Mr. Perez in connection with all of the negotiations that led to these various settlements. Thank you, Your Honor.

THE COURT: Fine.

MR. MAYER: Thank you, Your Honor. Thomas Moers Mayer

of Kramer Levin Naftalis & Frankel, on behalf of two clients.

I wanted to confirm for the record that Lehman Singapore does have an agreement with the debtors as recited. And I wanted to confirm at some great length that Lehman Brothers Treasury reached agreement approximately an hour and a half ago. My clients are Rutger Schimmelpenninck and Frederic Verhoeven are here from Amsterdam and signed their agreement in this courtroom. And in accordance with that agreement and pursuant thereto, we are in support of the disclosure statement and its approval.

And I just wanted to alert the Court also we expect to post that settlement agreement on our website for the benefit of our 100,000 creditors. Thank you.

THE COURT: Thank you. And Mr. Shimmelpenninck, welcome to the courtroom.

Now, I'm just not sure how many attorneys for parties who are supporters of the disclosure statement in its present form wish to be heard. If you're simply stating that you're in support and I've already read your supporting statement, there's no need to say anything. If you have something material to add and it relates to supporting the disclosure statement, we can do that now.

MR. REILLY: Good morning, Your Honor. Michael Reilly from Bingham McCutchen, on behalf of Wells Fargo, trustee. With me in the courtroom is Carrie Hardman from the Klestadt

Winters firm, on behalf of OMX.

I want to take thirty seconds to address what Mr. Miller said about the withdrawal of our objection on the OMX bonds to just underscore the point that this is all about classification and voting. It's not about confirmation. We need to know who we vote with and why we should vote for it. We have resolved the first step in the disclosure statement by asserting the dispute about how we're classified, and we now have a commitment to try to resolve that before voting takes place. If not, I'll be coming with a motion under Rule 3013 for classification again before voting. But I'm hopeful that we can resolve it with the committee and with the debtors. I appreciate their cooperation today.

As said to them, we have a billion-six in claims. We're trying to get on board with this train. But before we can vote and before we can hopefully support, we need to know where we sit. So it's just not a confirmation issue, but I may be coming back. But I agree with Mr. Miller's --

THE COURT: Fine.

MR. REILLY: -- withdrawal.

THE COURT: I --

MR. REILLY: Thank you.

THE COURT: -- I don't mean to very simplistic, but what I'm trying to achieve in terms of good order at this moment is that those who are now speaking aren't speaking in

reference to withdrawn objections or reservations of rights, but rather those who are supporting approval of the disclosure statement by saying something beyond what is already set forth in previously filed documents of support. Those who are going to be talking about reservations of rights or clarification of anything that Mr. Miller said in terms of otherwise resolved objections or who are planning to make statements in support of their objections would be going later.

So --

MR. REILLY: Okay.

THE COURT: -- Mr. Reilly, no offense --

MR. REILLY: I apologize.

THE COURT: -- but you're out of order.

MR. REILLY: Okay. I apologize, Your Honor for stepping in too early.

THE COURT: Okay.

MR. HUEBNER: Hey, Your Honor. All right, so what are you going to tell me, Your Honor? Let me be guided by you because it's not clear, frankly, exactly where you would have us fit. So I'll ask you to tell me. For the record, I am Marshall Huebner of Davis Polk & Wardwell, on behalf of Lehman Brothers International in Europe and its twenty-nine affiliates.

Your Honor, we do have some agreements reached with the debtors that are important to us and need to be on the

record in connection with our no longer objection to the disclosure statement. If that's a later issue, it won't be consented. It won't take very long. I'm happy to do it later, if that's the Court's pleasure. It seems that the other major parties who no long have issues have now spoken. We are certainly in that category. But if your wish is to let Mr. Miller begin the truly contested, clearly I will sit down and wait through all of that, if that's the Court's pleasure.

THE COURT: Well, I read your -- I think it was five-page statement that was not a statement in support but identification and certain clarifying language in a statement of your ongoing willingness to work cooperatively and in good faith -- assiduously, I think, was the term you used -- to move the process forward and ensure that you are going to speak in that spirit, but I think we would be very close to when it's time for you to speak --

MR. HUEBNER: Perfect. So then, I'll be waiting.

THE COURT: -- so let's just find out before we open, not the floodgate, but the door to others who have clarifying comments to make to see if there's anyone else who is a supporter of approval of the disclosure statement who wishes to say something that wasn't already stated in filed documents in support of approval of the disclosure statement and are in a category different from the debtor, the ad hoc committee, and the creditors' committee that has already spoken in support of

approval.

Since there are no takers, Mr. Huebner, you now fall into the next spot.

MR. HUEBNER: They doubted me.

THE COURT: You were well lined -- lined up for this particular role.

MR. HUEBNER: So I was thinking of various World War II philosophers to cite in response to Mr. Miller's references to Churchill, but I'm not sure the occasion quite merits that level etymology. Your Honor, for the record, I'm Marshall Huebner of Davis Polk & Wardwell, representing LBI and its twenty-nine affiliates.

Your Honor, as you know, I have spoken only once in a year and a half in this case. I have not, unlike other parties, littered the docket with we don't object, we do object, we sort of object when it's not necessary. So I'm actually going to be very brief today as well. We did not telescope in our disclosure statement pleading objections that we might well have with confirmation, but I think that it is important for the Court to know certain things that we agreed to with the debtors and our go forwards since we may be the largest unresolved party in this case. And if not, we are certainly one of the very largest.

Number one; we have agreed with the debtors that the approval of the order -- the entry of the order today in the

form of file absolutely does not preclude from arguing that the confirmation hearing cannot be held in December and must be adjourned. That was a clear agreed reservation of rights, which we discussed and also put in our pleading, which they actually reviewed. To be clear, we will be commencing discovery in the coming days with respect to the confirmation process and with respect to the deals that led up to the June 19th second amended plan.

Given that the fact that the original discovery schedule, as I'm sure Your Honor well remembers, and the protocol that, frankly, we had an awful lot to do with drafting stretched on for many, many months beyond December. The fact that certain parties are now -- were part of a negotiation process that we were not and have now reached a deal that we are not a part of certainly simplifies the issues somewhat. But whether it allows for the most complex case and history to go from a filed plan with some support, but by no means unanimous, to a confirmation hearing in a matter of a very small number of months is an issue that is ahead of us and not yet behind us.

Second, Your Honor, I do want to give you comfort, because I think it's also important to know, that we are working very hard and in very good faith to try to obviate the need to either seek to extend the confirmation schedule or to file what will be very intense and serious objections to

confirmation. We'll work with them on a voting stipulation. We're discussing reserve issues, and we have a absolutely dead serious in-person senior clients summit planned in London for mid-September, which we very much hope will add us the long list of supporters of the plan.

Your Honor, why are we not objecting to the disclosure statement? Because on the main, I actually agree with the comments that have been made so far, which is whether or not this plan is legal and passes muster is not today's issue. There's a lot the parties need to know about this plan if it is to be contested, including exactly how were these deals reached. Who was in the room? Who wasn't in the room? Did the debtor have authority without Court approval to enter into plan support agreements? But none of those things are today's issue because the disclosure statement was resolved, for our purposes, by changing two provisions in the plan that were very important to us.

And I would just want to be clear. The 815 I want resummarized, because Your Honor read the pleadings, and you know how they changed it. 8.4; Your Honor also knows they changed it. It was a simple matter of equity. It was not a LBI specific point, neither really was 815, but I want to be very clear for the record. 8.4 contains a provision that I haven't -- that is brand new that came in on June 29th that I have never seen in my life that says that the debtors can move

in the future to take out all the cash in the reserve if there are other noncash assets. This is arguably very prejudicial to the creditors whose claims are allowed later and very, very good to creditors whose claims were already allowed. And whether or not that's an issue, we'll see.

The oth -- the only other thing, Your Honor, that I really want to address today is that the disclosure statement approval also provides for the 3018 mechanics, and we have already served the debtors with our discovery in connection with 3018 because as Your Honor probably knows we have tens of billions of dollars in claims. And the amount in which we vote those claims is very important to us. By and large, we reached agreement with the debtors on the language that governs temporary allowance of claims. There are only two things I want to point out; both of which were discussed, and I think more or less agreed with the debtors.

Number one is that paragraph 6 of the disclosure statement approval order contains language that says that if the Court has not ruled on a 3018 motion by November 4th it's basically deemed disallowed, whereas we lose by default. So if we file a massive 3018 motion exactly timely and has hundreds of pages of exhibits and all that stuff and the Court just doesn't get around to it, it just gets thrown in the garbage, and our provisional ballot gets shredded. We and the debtors have agreed that, at least as to Liberty, that sort of can't

and shouldn't take place and that we will figure out, obviously, some flexible appropriate way. Obviously, it's the Court's calendar and the Court's pleasure that we all serve at.

How we will -- if we are unable to reach an agreement on voting, we will resolve that because a default rule that says if the Court is simply overburdened we don't vote at all, and our provisional ballot gets thrown away, there are other provisions in that disclosure statement approval order that seems to suggest that that shouldn't be the outcome. But there is that second sentence in paragraph 6 that basically says in black and white that if the Court has not ruled on a 3018 by November 4th the creditor just doesn't vote in the amount of provisional ballot.

So I don't think that's a today issue. I think it will get resolved, but it was obviously, for obvious reasons, critical to us that our votes not accidentally get thrown in the garbage by an accident of timing give our view that we're a very material creditor.

The other issue, Your Honor, which I do think is important to highlight because it was ultimately resolved with a conversation and a level of trust that we were very happy to place, both, in Alvarez & Marsal and in Weil, Gotshal is that another paragraph of the disclosure statement approval order, paragraph 28 says that for any reason, essentially in their sole discretion, the debtors can extend the voting deadline for

any individual creditor, individual claim or individual ballot. As you can imagine, in a hypothetical world where you don't know who the debtors' professionals are, a provision like that that says I'm the plan proponent. This is the voting deadline except that in my sole discretion anyone I want to can have a different or a better one has at least the potential for mischief. We're completely comfortable, and Ms. Fife very graciously added the phrase in good faith to that provision for us, and we don't need more than that because we trust this team completely that the ballot extension will happen only for proper reasons and not as one might hypothetically in a sort of dark world that is not the world before us to further ensure plan support.

So, Your Honor, with those couple of changes -- now, unfortunately, I think that we will have to work kind of a little bit to try desperately hard, which is -- I can assure you with all my heart and soul we are doing -- to settle by day. but we also will have to work with the debtors on an accelerated timeframe to get ready to litigate by night, because as you can imagine for us in particular, where LBI affiliates have billions and billions of dollars of claims where LBI is the primary obligor, the argument that Europe's, I think, largest broker dealer should be somehow with the U.S. debtors, and all those guaranteed claims get thirty-five percent less than the guaranteed claims of third parties is a

very hard one to swallow.

So I'm hoping that we'll be able to resolve it and obviate the need and be able to join the victory lap and the victory dance that others have already begun this morning. Thank you.

THE COURT: I don't view what has happened this morning as a victory lap as much as I view it as an acknowledgement that heroic efforts have achieved a very important transition point in the case. And I don't -- well, Miller tends to a rhetorical flourish there, but I think the disclosure statement hearing is not a victory lap. It is a statutory step that must be taken. And in case of this consequence represents an extraordinary and noble achievement. And I view the comments made by counsel for the debtors, the creditors' committee and the ad hoc committee as being an acknowledgement that this is an important day.

Regardless of the outcome of the hearing and regardless of the outcome of future hearings, to have marshaled the resources that were marshaled for this process and to have achieved substantial consensus leading to the agreement of proponents of competing plans to support this debtors' plan borders on the miraculous. And this all happened in an environment where the debtor did not enjoy the statutory benefit of exclusivity or extension of exclusivity because we're beyond eighteen months, and Congress wouldn't let us do

it.

So we are dealing in a completely unchartered territory using plan support agreements, whether or not Court approved, that are achieving a highly desirable purpose, orderliness in lieu of unnecessary litigation. So I appreciate your remarks, but far moved by your comment to interject my own observation, which I appreciate what the professionals have done and are doing, including yourself. But today is not about reserving rights. Everybody's rights are reserved. Everybody's right are reserved for a confirmation hearing assuming this disclosure statement is approved. Everybody is encouraged to work assiduously to work out agreements. Whether their claims are monstrous or moderate, everybody is encouraged to behave as grownups in our enlightened economic self interest to produce outcomes in this remarkable case but I can't make happen unless you all behave.

MR. HUEBNER: I -- it goes without saying that I agree with every one of those sentiments, and I -- as an aesthetic manner, the fact that the two opposite poles were brought together I think it justifies some of the adjectives Your Honor described. That said, what it may need to be discussed at some point is a; that not everybody was in the room, and some of the people from whom things were taken to cut those deals have yet to be brought into the tent. It may look a little bit less miraculous when the full record actually comes out. And number

two; we hope to be brought into the tent, and that's an important thought that I want to leave with, which is LBI, in particular, and I are working as hard as is humanly possible to get a deal done and join the list of those who are on board.

I did not mean any disrespect to the process or to the professionals' achievements, but the fact that seemingly two opposite sides with them and not many of others in the room during that summit meet agreed to something does not necessarily make it legal or confirmable. And hopefully we won't have to test that issue. And, again, Your Honor, to be clear. We didn't file the twenty-pager. You're right. We filed a five-pager. We didn't telescope issues. As I said, this is the second time in fifteen months I have ever stood up here. I don't burden the docket with prequels and things like that. But some of the issues that I raised today were things that were critical to our agreement, not to object to disclosure, that were not in our pleading. We thought it was very important for the Court to know.

So to the extent that Mr. Miller, Mr. Shore, Mr. Dunne thought that I was disrespecting their achievement in bringing the ad hocs and the LBSF trade creditors together, I certainly was not. But they did that in part, at least it may one day be argued, by taking from people that they did not invite to this party. And that may have to be discussed.

THE COURT: Okay. Here's what I'm going to propose at

this point. It's 11:17 by the clock on the back wall, and at some point we're going to need to take a break. I'd like to do it in an orderly way. And given the numbers that we have, there's the potential that any break will be prolonged simply because people have to go out and come back. So what I'm going to propose is that we have all of the speeches before we take a break, and then take a break and go into the merits of the objections.

So if there are speeches that need to be made, let's do that now. and by speeches I mean clarifications, reservations of rights that you feel are necessary even though I have just said that everybody has a full reservation of all rights with respect to confirmation, anything that you feel needs to be said so that I better understand anything that has already been said in writing or anything that has already been said on the record about you. So let's have those comments, whatever they may be, and that may also apply to any resolved objections to the extent that you need to say anything to clarify and emphasize a point.

I'll hear from counsel for the U.S. Trustee.

MS. SCHWARTZ: Good morning, Your Honor. Andrea Schwartz for the United States Trustee, Tracy Hope Davis, who is here in the courtroom today.

Your Honor, I listened very carefully what you said, and I have just two brief comments. First of all, Your Honor,

as you're aware, we filed the objection to the disclosure statement. And as Mr. Miller advised the Court, they worked very cooperatively with the United States Trustee's office to resolve many of the informational deficiencies that we cited. In fact, they've added disclosure to fourteen issues that we identified, and we thank the debtors' counsel for working as cooperatively with the United States Trustee as they have.

As Mr. Miller said, there are nine issues that have now been deferred to confirmation. I won't go into the reservation of rights. We set that forth. I do want to clarify, though, for the Court that with respect to the solicitation procedures debtors' are going to be filing a retention application for Epic Solutions. And I will defer to Mr. Miller or Mr. Perez to advise the Court when that application will be filed. Thank you very much, Your Honor.

MR. PEREZ: Good morning, Your honor. Alfredo Perez, on behalf of the debtors.

Your Honor, Ms. Sullivan is here in the courtroom, but we do intend to file the application probably as soon as we get back to the office. I think it's ready to go. Traditionally, Your Honor, you didn't have to retain a -- the sol -- the party as a solicitation and balloting agent. As a result of the issues raised by the U.S. Trustee, we're going to file a separate 327(a) application to retain Epic and one of its affiliates to do just the solicitation and balloting work as

opposed to the normal mailing and administrative work and serving all of the plans, which will be done by the Epic that has already been retained in the case.

THE COURT: Okay.

MR. PEREZ: Thank you, Your Honor.

MR. COHEN: Good morning, Your Honor. Joshua Cohen, on behalf of Fidelity National Title Insurance Company.

Your Honor, the goal with regard to the insurance policy issues and the objection that Fidelity filed was to achieve a ride through or a pass through regarding coverage issues and the like that may or may not manifest themselves in the future and may result in extensive litigation in the future and to avoid having unnecessary litigation at this time. that's what caused us to include in our objection and to discuss with the debtors originally what we described as the ride through alternative.

If I heard Mr. Miller correctly this morning, it sounds as though -- although this is the first we're hearing it -- that the debtors are in agreement with that proposal. I would suggest that we would use the break to try to work out some language to effectuate that and to, consistent with Your Honor's observations, avoid yet another series of litigation that may happen in the future.

THE COURT: I'm certainly happy to have you talk and reach an agreement. I don't know that I view the Fidelity

National Title Insurance Company as a disclosure statement objection as much as I view it as a plan related objection. if your objection can be obviated by agreement, that's fine. and if it's not resolved by agreement, it's going to be overruled.

MR. COHEN: I respectfully hear what you're saying, Your Honor. I would like to at least be heard. If we don't resolve it, I would like to at least be heard with respect to --

THE COURT: I read it, and I discounted it as I was reading it before I even saw a reply from the debtors that this was a misuse of the disclosure statement objection to in fact achieve a different purpose. And you've acknowledged that that's the purpose that you filed it for by saying that you were looking for a ride through, which is plant treatment. So since what you're really concerned with is a totally parochial issue, you're certainly free to discuss that and reach an agreement that makes your objection go away.

But if you don't reach an agreement that makes your objection go away, I'm going to wipe it away.

MR. COHEN: And I would ask Your Honor that I at least be allowed to make a record with respect to why there are --

THE COURT: You can make whatever --

MR. COHEN: -- disclosure statement issues --

THE COURT: -- records you want, but I have read --

MR. COHEN: -- embedded within it --

THE COURT: -- it. It speaks for itself. I've considered it carefully, and you can have whatever time you think you need consistent with the crowd that's here for disclosure issues to talk about your prior concerns. But I would urge you that that be a very limited amount of time.

MR. COHEN: I understand, Your Honor. thank you very much.

THE COURT: Okay. is there anybody else who wishes to make a comment or two at this point or shall we take our morning break? Before we take the morning break, I do have a question which I'd like the proponents of this plan to consider during break, and then you can discuss this with me when we resume. One of the curiosities for the Court has been just when we're having a confirmation hearing assuming that the disclosure statement is approved today.

I recognize the timeline that's laid out in the papers and the fact that early November is a time period for voting and objections. I also note from the comments made by Mr. Huebner that December has been identified as a time when the confirmation hearing might commence. No one has contacted my chambers to reserve any time in any month this year for purposes of confirmation. And in anticipation of today's hearing I have been engaged in some internal planning and speculation as to just what dates might be needed.'

Before anybody assumes anything about calendar year

2011, I think parties should at least give some thought to how much time would be needed for the confirmation process. As Mr. Uzzi knows well, having sat in about that position some time ago in a different confirmation hearing that was before me when he represented one of the objectors, contested confirmation hearings in cases that are large and complex but much smaller than this one can take a very long time. And so, at some point in today's hearing I would like greater clarification from the parties as to what you're thinking about in terms of preparation for confirmation and allocation of time on this calendar for purposes of doing all this in an orderly way consistent with your needs and the Court's needs.

And I think for these purposes you should assume that everyone with a disclosure statement objection is characterized here as a confirmation objection would be pressed as confirmation objections unless they are otherwise resolved and that it is conceivable that there will be other objections that haven't been raised as disclosure statements objections that may in the future be raised as confirmation objections because thoughtful counsel may have decided why telegraph our position now. we'll wait.

so recognizing the uncertainty of the process I'd like to at least know what the parties are thinking about, and let's take a break now, it's about 11:30, and resume at 10 minutes to 12. That gives people who want to go home or do something else

a chance to leave, those people who want to take a little walk around and take a break a chance to take a break. And we'll be back promptly at 10 of, and I assume that people are going to rush back to their same seats, although they are not reserved. We're adjourned.

(Recess from 11:30 a.m. until 11:58 a.m.)

THE COURT: Be seated, please.

MR. MILLER: Your Honor, may I approach? This is --

THE COURT: Yes.

MR. MILLER: -- a schedule. In terms of the timing for a confirmation and after discussion with various parties, Your Honor, and assuming no resolution of all of the issues and some more, which I'm sure we'll conjure up, and Mr. Huebber -- Mr. Huebner referred to, LBI thinks that it will need two weeks to present its objections. So I would say, Your Honor, it's a minimum of two weeks and probably three weeks for confirmation here. And we would like -- it's aspirational, I grant you, Your Honor, to start it on December 6th, 2011.

THE COURT: All right. Well, December 6th has already been booked. We've also set aside, subject to the movement of some items the following week, for the absorption of a Lehman omnibus hearing date which I believe is the following week on December 14 and the conversion of that into a confirmation hearing date. I can give you a solid two weeks less a day, because we're starting on December 6th, that week into the end

of the following week subject to moving a SIPC claims hearing which is set for that second week. And if that can be moved into the week immediately after that, and I'm seeing what look like nods from counsel for the SIPC trustee but you don't have to agree now.

MR. KOBAK: I just need to go back to my office and check.

THE COURT: Fine. We don't need to wrap that up at this moment on the fly but I can give you almost two weeks solid if we make those adjustments.

MR. MILLER: Thank you, Your Honor.

THE COURT: And as far as additional time is concerned, we'll deal with that when we get closer to those days.

MR. MILLER: Thank you, Your Honor.

THE COURT: All right. Was anything worked out with counsel for Fidelity National Title Insurance Company during the break?

MR. COHEN: Your Honor, Joshua Cohen again on behalf of Fidelity.

Based on Your Honor's statements regarding reservations of rights and Mr. Miller's statements earlier on the record agreeing and acknowledging on behalf of the debtors that the plan and assumption should not foreclose Fidelity for raising and denying coverage of any proceeding, Fidelity will

rest on their reservation of rights and proceed at a later date as it sees appropriate.

THE COURT: That sounds fine.

MR. COHEN: Thank you, Your Honor.

THE COURT: Okay. The next objection that I have that's an unresolved objection is Deutsche Bundesbank.

MR. MILLER: Your Honor, if I may, number 7, Your Honor. That's the one I mis -- I misread their e-mails.

THE COURT: Oh.

MR. MILLER: So, it's --

THE COURT: It's BDB.

MR. MILLER: -- that's right, Your Honor.

MR. BROUDE: Good morning, Your Honor. Mark Broude of Latham & Watkins on behalf of Bundesverband deutscher Banken.

I appreciate Mr. Miller's confusion because he was in part correct. BDB is not pressing an objection asking you to deny a proof of the disclosed and we've sort of narrowed ourselves to, in effect, a request.

As Mr. Huebner said, one of the big issues that will be part of the confirmation hearing is substantive consolidation and particularly as it relates to cross-border international substantive consolidation involving regulated banks and banking institutions. The debtor in the disclosure statement spends a lot of time talking about the factual bases for its position on substantive consolidation domestically but

effectively no time talking about the bases, at least factual, for international and regulated substantive consolidation. We believe it will be helpful to develop the issues for confirmation if the debtors do provide some information about why they believe there is a factual predicate for that type of substantive consolidation. That's all that we have left in our objection, Your Honor. Obviously, you can determine whether the debtor should provide that information but that's really what we have left.

THE COURT: Okay.

The next one is Deutsche Bundesbank.

MS. VRIS: Your Honor, I -- this is Jane Vris for Vinson & Elkins on behalf of Deutsche Bundesbank. I learned two useful -- well, one useful thing but two things this morning. First I learned this is a little like Lake Wobegon. It seems that everyone's creditors -- everyone's claims are a little bit larger than normal here so I won't talk about the size of our claim. The other thing I learned and it was the more useful one is that I should keep this very short so I will.

We filed our objection. We know you have read it. Our client would like us to inform the Court that we are in negotiations with the debtors. We are hopeful that we would reach a settlement and we appreciate that the debtors are making time to meet with us even this week to try and continue

those discussions. But at the moment what we have is a plan that we must consider based on the disclosure statement before us.

I acknowledge that classification is definitively a confirmation issue and I appreciate that the correct standard for the best interest test will be a confirmation issue and is not relevant for this time. So, what I would like to do instead is focus, just as Mr. Broude did, really, is on our concern about the disclosure for the reasonableness of the settlement on substantive consolidation because that's really the issue for my client in assessing the plan.

In looking at the disclosure statement, there are, I think, two and a half pages that do apply the Drexel factors to the Lehman debtors. Those are on pages 55 to 57. The difficulty we have with that disclosure is that the application is somewhat generic. It talks about whether the factors could be applicable to any of the Lehman entities, affiliates, subsidiaries, whatever. So, we cannot tell looking at this which they think might be applicable to our primary obligor which is LBB. For that matter, as Mr. Broude said, we can't quite tell what would even be applicable to the foreign debtors generally.

For disclosure, I think -- the debtors mention Enron in their reply papers and I think it's actually instructive to look at what the debtors' professionals in Enron, whoever they

might have been, did there to disclose why they felt that the settlement they were proposing for the debtors in that case on the substantive consolidation issue was a reasonable one.

Attached as what was Appendix M to their disclosure statement was their substantive consolidation analysis. They went entity by entity, applied thirty-one factors to each of those entities which was very informative for creditors. They were able to see in the debtors' assessment and as a basis for why the debtors felt that their plan was reasonable and preferable, assess what the debtor sought was a substantive consolidation risk.

I appreciate that not every entity is going to be the same and it's a range and it's a compromise. The difficulty, honestly, that we are having is that we see no factors supporting substantive consolidation. So, other creditors may not care as much about this point, I appreciate that, and maybe they just need to do this for the foreign entities or for LBB, but we do believe it would be very useful for the disclosure statement to at least describe which of the factors they think are applicable to, if not LBB, then at least the foreign regulated entities because I think there is a distinction there.

The debtors did address our concern about the evaluation of cash and we appreciate that. That resolved our objection there. And as I mentioned before, classification is

clearly a confirmation issue. That leaves just one category of objection that we had and it wasn't included in the summary; I know you will have noticed it. It was merely that there are in addition to the provisions in the plan that provide for distribution to creditors, certain provisions that either give rights to the debtors or ask creditors to give up certain rights and we believe that a number of those would not be applicable in a Chapter 7 again staying away from what the standards are or aren't for the best interest test, we just thought it would be useful if the debtors would say whether they believe some of those provisions would not be applicable in Chapter 7 and that they've at least taken that into consideration in their recommendation.

By way of example, they have creditors giving up claims against creditors. That would obviously not exist in a Chapter 7. They may have appreciated that and they may have taken it into consideration. We just believe it would be helpful if the disclosure statement would aid the creditors by sharing the debtors' reasoning on those types of provisions in the plan. Did they take it into consideration and do they still believe that this is better than not any plan but the Chapter 7 alternative. And, Your Honor, with that, I would rest. Thank you.

THE COURT: All right. Thank you. Sumitomo.

MR. TOUGAS: Good afternoon, Your Honor, Jeffrey

Tougas, Mayer Brown, counsel to Sumitomo Mitsui Banking Corporation.

Your Honor, Sumitomo Mitsui Banking Corporation will rest on its papers as filed with the Court reserving our rights to the extent that our objections go to confirmation. We've had a conversation with the debtors' counsel and are hopeful to begin settlement discussions in the near future.

THE COURT: All right. Fine.

MR. TOUGAS: Thank you, Your Honor.

THE COURT: Thank you. Centerbridge Credit Advisors.

MR. QUERSHI: Good afternoon, Your Honor. For the record, Abid Quershi, Akin Gump Strauss Hauer & Feld, on behalf of Ceterbridge Partners.

THE COURT: Let me just ask you one question about the joinders. Do you know whether or not you're speaking on behalf only of Centerbridge or also on behalf of Anchorage and Monarch Alternative Capital?

MR. QUERSHI: On behalf of the joinder parties as well, Your Honor.

THE COURT: Fine. So, I won't call on them.

MR. QUERSHI: Thank you, Your Honor. Very briefly, Your Honor.

A number of our concerns were addressed in the amended disclosure statement. There are a number of additional disclosures that we still think should be required and I can go

through those quite quickly, Your Honor.

First, with respect to the Bankhaus claims, though we do think that there should have been more discussion in the disclosure statement explaining their treatment of those claims, we are prepared to defer those issues to confirmation. So, that leaves us, Your Honor, with half a dozen what I think are pretty straightforward points where additional specific disclosure we think should be required. The first of those relates to the note transfers from LCPI to LBHI. This, Your Honor, is addressed in paragraph 15 of our objection. And the thrust of this one, Your Honor, is that there were certain notes that were transferred from LCPI to LBHI. In return for which LCPI did not receive cash or its equivalent but instead a reduction in its intercompany indebtedness.

We believe that these transfers that occurred may be preferences and, Your Honor, the debtors in their disclosure statement didn't dispute that and say that there may be valid differences. But there's no discussion or analysis at all of what those potential defenses might be, what provisions of the Code they might be relying on or any analysis of why they think those defenses might be applicable.

Again, we think that it would be helpful to creditors to understand from the debtors' perspective what these defenses are and why the debtors' believe them to be applicable.

A very similar issue, Your Honor, with respect to

capital contributions. This one is addressed at paragraph 20 of our objection. That's on page 12. And again, here, LCBI received capital contributions in excess of a billion dollars from its parent, from LBI. LCPI never recorded those infusions as assets. Instead, the cash was transferred to LBHI, again, in return for a reduction of LCPI's intercompany indebtedness.

Again, we think that these transactions may well be preferences. And again, there's no discussion in the disclosure statement of the defenses that the debtors believe might be applicable to these transactions. And again, we think it would be helpful for creditors to understand that.

Moving onto our third point, Your Honor, this relates to the so-called intercompany only repurchase transaction. This one is addressed at paragraph 25 of our objection on page 16. And very briefly, Your Honor, this involves LCPI having a valid security interest and approximately two and a quarter billion dollars of assets that were subject to an intercompany only repurchase transaction.

The disclosure statement explains that LCPI has not taken possession of those assets but instead recorded a secured receivable against LBHI in the amount of a little over a billion dollars. What we think should be added to the disclosure statement here, Your Honor, is an explanation of the following. If LBHI, as is explained in the disclosure statement, retained assets for the benefit of LCPI, there

should be an explanation as to why those assets were not monetized to reduce the risk to LCPI of a diminution in the value of those assets.

And the second point, Your Honor, is the amended disclosure statement states that the transfer of those assets to LCPI would have been operationally costly and burdensome and might have been detrimental to default provisions in other agreements.

There's no analysis of that. There's not even any mention of what other agreements the debtors are referring to in the disclosure statement. So, again, given that these assets reduced in value by over a billion dollars, we do think that additional discussion is warranted on that point.

Next, Your Honor, a very straightforward one, the allocation of cost and expenses. This is the second bullet on paragraph 25 of our objection. The amended disclosure statement provides that the debtors will be party to a debtor allocation agreement to share administrative expenses but the terms of that agreement aren't discussed and quite simply, we think that the terms of that agreement should be disclosed.

And next, Your Honor, the LBI purchase of Bankhaus notes. This is addressed on page 17 of our objection. In summary, Your Honor, LBHI purchased certain notes from Bankhaus. The disclosure statement explains the benefits to LBHI of that transaction. The debtors acknowledge that LCPI

could also have purchased those notes but there's no cost or benefit analysis disclosed as to why it made sense for LBHI as opposed to LCPI to purchase those notes. And again, we think that should be disclosed so that creditors can determine whether this is a transaction that did or did not benefit LCPI.

Last point, Your Honor, this is addressed on page 18 in the last bullet point of our objection, this involves the transfer of certain assets from LCPI to various special purpose entities. LCPI sold or participated portions of these assets to various SPEs. The disclosure statement, Your Honor, concludes that these were true sales and not financings and to the extent they were financings they were validly and properly perfected; but those are conclusory statements. There's no indication at all as to why the debtor believes that to be the case. Again, we think it would be helpful for there to be some discussion of why the debtors came to that conclusion.

That, Your Honor, is all we have unless the Court has any questions.

THE COURT: I don't have any questions.

MR. QUERSHI: Thank you.

THE COURT: Danske Bank.

MS. CALLARI: Good afternoon, Your Honor. Carollynn Callari with Venerable on behalf of Danske Bank, London Branch.

Your Honor, we will be brief. It's not -- the debtor has resolved some of our issues and one of the benefits of

going last is you don't need to repeat things that others have already said. So, I just need to, one, respond to one of the comments that Mr. Miller made about some of the remaining objectors.

Danske is not a claim straighter. It is not a creditor that obtained its claim post-petition. It's ordinary course creditor that has the misfortune of being one of the largest unsecured creditors of LCPI. With that, we have similar concerns raised by Mr. Huebner which we will deal with at confirmation and we accept that. We acknowledge that the debtor did resolve some of our concerns with additional information and we do appreciate that. As well as Ms. -- we continue to have a concern as Ms. Vris pointed out with respect to a specific kind of substantive consolidation analysis with respect to LCPI that was a subsidiary of a regulated entity up to the petition date and understanding, really, how books and records can be so comingled at this point that subsequent consolidation really would be warranted. But we also understand that we can probably deal with that later but as a creditor, really coming at this trying to understand, we're one of the largest LCPI creditors and yet we were not invited to the global negotiations. And since filing this objection to the disclosure statement, the debtors had not sought to confer with us to try and resolve the objection. Now, they have with some of the points; there's only a couple of points we have

left. But one of the issues really is we truly want to understand the reasonableness of this settlement since we were not there and we don't have all of the specific details.

With that, one of the pieces of information that I think will be helpful to us and other reasonable investors, the debtors -- we had requested to understand who kind of was there at this negotiation. And if we can't get into those details now, that's fine; we can do it through discovery and we'll work that out with the debtors. But understanding the plan support agreement list, all we asked was to really understand -- out of those people who signed plan support agreements, where's their primary claim? Who is it against? If you see that, I think there were thirty of a twenty-five that LBHI and five at LBSF or perhaps that disclosure will help see that they really are scattered throughout all of these debtors including at LCPI. But telling 110,000 creditors that might get notice of this confirmation that they have to each go to the claims register, compare them to the plan support agreement counterparties, figure out where all their claims are and in which one of those is really their real primary claim, that's unreasonable. Where it's not unreasonable for the debtor to talk to thirty counterparties and say, okay, identify for us where your primary claim is, list it, which debtor, that's one disclosure I think is reasonable and would be helpful to really take away any kind of bad connotations with who's really supporting this

agreement as opposed to this, it's a global resolution. We have a concern at LCPI and we'll deal with that later.

The other -- only other point I would like to raise is a continued concern on the estimation hearing procedures. Similar to as Mr. Huebner pointed out, just in the confirmation order, if any creditor, including Danske, were to file a timely estimation motion and for scheduling reasons or whatever didn't satisfy the November 4th deadline to get an order, I don't believe that creditor should be prejudiced by that deadline and not have its claim allowed or counted for voting purposes, Your Honor.

So, with those, we are okay on all of the other reservations of rights and the other clarifications that the debtor made, Your Honor, including the points that counsel for Centerbridge made for LCPI. Thank you, Your Honor.

THE COURT: Okay. Thank you. The last of the institutional objections is Mason Capital.

MR. HANSEN: Good morning, Your Honor. May it please the Court, I'm Drew Hansen -- I'm Drew Hansen. I'm a little bit taller than the microphone. Maybe I'll just hold it Elvis style if the Court doesn't mind.

THE COURT: Okay. It's a little trick for people who are pro hac admitted.

MR. HANSEN: Thank you. It fools me every time.

I'm from the Susman Godfrey law firm. I represent

Mason Capital Management a creditor who holds about 380 million dollar of notes issued by Lehman Brothers Treasury BV, a Dutch company. And as the Court knows from our papers is in insolvency proceedings in district court in Amsterdam right now.

This class in the aggregate owns about thirty-four billion dollars worth of claims, about ten billion of which we are relatively certain is held by institutional investors. The remainder of which it's not tremendously clear who holds it but at least some nontrivial portion is held by retail investors most likely overseas since and most likely in the Netherlands since that's where the company is.

Our disclosure objection is a relatively simple one. The disclosure statement describes some value transfer schemes that are in our view unusual if not totally unprecedented and we think there's insufficient disclosure of the authority behind them. Very quickly, there are three that we raise in our papers.

First, the authority for a twenty percent risk of substantive consolidation of an entity that is not a debtor and is subject to insolvency proceedings in a foreign country is the related to the objection raised by Deutsche Bundesbank earlier.

Second, the authority for taking the proceeds of a settlement of substantive consolidation and distributing them

not to the estate as a whole but rather directly into the pockets of particular classes of creditors.

Third, the authority for the proposition that if LBT and other noteholders who are similarly situated can't share in the proceeds of the settlement of their own substantive consolidation claim, then why do they not at least get to share in the proceeds of settlement of substantive consolidation where the consolidation of those entities would actually benefit LBT because the proceeds would go to the estate.

The debtors' counsel has been kind enough to confer extensively with us since we filed our objection. We have told the debtors' counsel that we will withdraw our objection if they will either propose some language that provides the authority for these three procedures or, two, just say that there is no authority but the debtors going to go forward with them.

The debtors' counsel was not willing to do this which is why we're here and they were gracious enough to offer that we could have language setting out our view that there is no authority for these procedures with the explicit disclaimer that is our view and we have proposed language of that sort to them. We would be delighted to see language like that in the disclosure statement. It would make it more instructive than it is now which is all for the good. But it doesn't resolve our objection. There is plenty of language in the disclosure

statement already that is effectively he said she said. Some people say this, the debtor disagrees. And if you are the hypothetical reasonable investor particularly one overseas, that's not terribly helpful because it doesn't tell you if there is a cognizable debate here or whether the debtors, in fact, don't have any authority for their possessions.

So, that's our objection, Your Honor. As we've said, it's a relatively easy one to fix. Either insert some language that gives the authority or say there is none but we haven't seen that language yet so that's why we're here.

THE COURT: Let me just understand something.

MR. HANSEN: Yes, sir.

THE COURT: Did I hear you say that the debtor is prepared to accept certain language that you might propose that sets forth your position noting that it's your position and they disagree with it and that's acceptable to you?

MR. HANSEN: The debtors indicated that they may be willing to do this. I'm not going to speak on their behalf but we have told them that we would not resolve -- that doesn't resolve our objection.

THE COURT: Well, it has to resolve your disclosure objection. It may not resolve your objection to the extent it's a confirmation objection but you can't be telling me that if your language is inserted you're not satisfied?

MR. HANSEN: That's exactly what I'm telling you, Your

Honor. It's that the language that says Mason believes, dunt, dunt, dunt, dunt. The debtor disagrees. To our view, that doesn't help say -- that doesn't solve the disclosure problem which is --

THE COURT: It sure does.

MR. HANSEN: -- what in the debtors' view is different?

THE COURT: It sure does. It's over. If you get that, you're probably getting more than you're entitled to get. So, I would screw in the microphone and sit down.

MR. HANSEN: Thank you, Your Honor.

THE COURT: We have objections by four pro se individuals. I had called to see if these individuals were present in court or on the telephone earlier in the proceeding and heard no response. I just want to double-check to make sure that these people have not shown up or joined the call; Chris Stovic, Linda Neufeld, Tommy Tewalt, Gary Cutler. Are any of those individuals present in person or by phone?

(No response)

THE COURT: They're not. Their objections will be overruled for failure to prosecute.

Now, we've gone through each of the currently outstanding objections. I just would like to give the debtors an opportunity to comment and respond and this is that time.

MR. MILLER: Thank you, Your Honor.

Your Honor, starting with BDB as Mr. Broude said, I think I heard him say they're not pressing the objection. And he made a suggestion or just a suggestion as to additional language as to the ability to substantively consolidate an international subsidiary.

We believe, Your Honor, that the information in the disclosure statement which refers to international stipulation that says specifically that "Certain foreign debtors and their assets are subject to jurisdiction of regulators of foreign courts." Potentially, the bankruptcy court may order an alternative remedy that would have an impact similar to substantive consolidation on the creditors of foreign debtors that relates to the distribution of dividends out of this estate, Your Honor. We believe that there is ample authority in the Bankruptcy Code that if we can establish the 9019 standards with respect to the substantive consolidation and giving the worldwide jurisdiction, maybe not recognize that this bankruptcy court, Your Honor, that you can substantively consolidate an international affiliate. Now, it may be that an international court will refuse to enforce the order, but that doesn't detract from the jurisdiction of this Court.

Insofar, Your Honor, as Ms. Vris' objections on behalf of Deutsche Bundesbank, I'm glad that she acknowledged that we are in negotiations and hopefully will resolve that entirely. The objection is basically, in part, at least the same as Mr.

Broude's.

Insofar, Your Honor, as the disclosure for the stipulation analysis is concerned, Your Honor, it complies with the standards which are applicable to liquidation analyses. It contains the debtors' best judgment as to what would happen in a Chapter 7 liquidation. And again, Your Honor, it's a confirmation issue as to the valuations which Your Honor will have to decide as part of the confirmation hearing. So, we would submit, Your Honor, that it is a confirmation issue.

The issues as to substantive consolidation again, Your Honor, relate back to Rule 9019 and the ability to satisfy Your Honor that this is a compromise in settlement that should be approved.

As to the time value of money, we have added additional language at page 5-1 of Exhibit 5 of the blackline to note that we have not applied a present value discount.

With that, Your Honor, I think we've responded to objections of Bundesbank.

Sumito --

THE COURT: Let me --

MR. MILLER: I'm sorry.

THE COURT: -- let me -- let me just break in and ask you a question though. There's a theme that surrounds a number of the objections especially those lodged by counsel for certain foreign creditors on the subject of substantive

consolidation. And one of the themes has to do with the nature of the settlement itself which is an across the board twenty percent reallocation in respect of a substantive consolidation risk that is for purposes of the plan viewed as class-wide. For disclosure purposes, Ms. Vris is arguing that it would be more helpful, and I realize that she's arguing this with a particular objective in mind, but that it would be more helpful if there were an entity by entity assessment of substantive consolidation risk parameters and I just have a question for you. Is that feasible to do, is it relevant to a creditors decision-making, and why is it that this is a fight?

MR. MILLER: Going in reverse order, Your Honor. I don't understand why it is a fight. But when it comes to the confirmation hearing, Your Honor, since this is not a consolidation plan, it will be the debtors' burden to show this on a debtor by debtor aspect as part of the compromise in settlement. But, Your Honor, basically will be -- if you confirm these case -- this plan, Your Honor, you will basically be confirming twenty-three different plans.

In terms of -- Ms. Vris held it up and I think it was just about this thick -- a portion of the disclosure statement from the Enron case, that would be a very costly endeavor right now, Your Honor. We anticipate that between the approval of disclosure statement and the confirmation hearing, there will be substantial amounts of discovery. And if there are

objectors or potential objectors who are concerned about this issue, that's where it should take place in anticipation of confirmation, Your Honor.

THE COURT: Okay. Thank you.

MR. MILLER: Okay. Your Honor, the next one is Sumitomo Mitsui Banking Corporation and I believe counsel said he was resting on his papers.

THE COURT: Right.

MR. MILLER: So, I likewise will rest on the papers.

Turning to Centerbridge, Your Honor, as Your Honor will have noted, there have been substantial additions to the disclosure statement to deal with the objections that were interposed by Centerbridge and I believe that counsel said that those were helpful. Basically, counsel is focusing on transfers, capital contribution, repo transactions, and what the disclosure statement points out, Your Honor, is that these are allegations that may be made and that there are potential defenses. In connection with preferences, obviously, there are defenses under Section 547(b) relating whether this was an antecedent debt or there was contemporaneous valuation and all of the defenses that are in Section 547 that could be pursued.

Similarly, with respect to capital contributions and the other allegations, there were questions as to whether these were fraudulent transfers, whether LBHI got adequate consideration for writing off an entire intercompany receivable

from LCPI.

Again, Your Honor, this is in relation to how ultimately Centerbridge's claims and the claims of the two joinders are going to be considered. It is focused on that aspect of it and it may, Your Honor, that purely by accident maybe Centerbridge and the others bought the wrong notes and the holding notes that may not have the value they thought they were going to have. But again, Your Honor, these are discovery issues in anticipation of confirmation.

And as I said, Your Honor, we have extensively added language to the disclosure statement to meet the objections of Centerbridge and the two joinders.

And as I said, Your Honor, there will be -- I'm sure that they will be taking discovery, there will be substantial discovery and all these issues can be flushed out. But take into consideration, Your Honor, the fact is going to a disclosure statement, this would be a big delay and it would be very costly and we don't believe that it's in the interest of all the creditors that there be a further delay in the approval of the disclosure statement while a 200 page supplement to the disclosure statement is prepared. That can be taken care of because they relate to confirmation issues.

THE COURT: Okay.

MR. MILLER: I think, Your Honor, that may -- that may conclude -- oh, Mason, Your Honor. I'm sorry? Oh, Danske.

Again, Your Honor, counsel's statements basically relate to confirmation from our perspective. The question as to whether the 8020 as we sometimes refer to it is appropriate for the compromise in settlement. Your Honor will have to decide at the time of confirmation.

As I said, the authority of the bankruptcy court to order substantive consolidation should the facts support it, I think Your Honor has that authority. This is a court on very broad jurisdiction not withstanding Stern v. Marshall. Your Honor has that authority, Your Honor has exercised that authority, and that will be a confirmation issue.

And the distribution and ability of certain creditors to participate under the plan adjustment, again, Your Honor, those are confirmation issues.

Mason, Your Honor, again, the three objections, basically, which have been set forth by Mason are -- have been discussed before by other objectors. And it goes to the approval of the compromise in settlement. We did make a proposal to Mason in which we offered to include in the disclosure statement a clear and concise statement of Mason's position and with a caveat that the debtor disagreed. And that as I recalled, Your Honor, is about a page and a half. It did not -- when we asked Mason if that would satisfy for the purpose of this hearing, their objection to the answer was not so we did not include it, Your Honor. We are perfectly willing

to include that in the disclosure statement to obviate any further consideration of this objection, Your Honor. We believe the disclosure statement, Your Honor, is complete. As Mr. Dunne says it satisfies the standards of 1125(a)(1) and we should get this process going to get these cases completed. Thank you, Your Honor.

THE COURT: Okay. Is there anyone who wishes to be heard with respect to the pending objections who hasn't spoken?

(No response.)

THE COURT: Okay.

I'm going to -- I don't think anybody should move but I'm going to take about a five minute break and collect some of my thoughts and then come back.

MR. MILLER: May we stand up, Your Honor?

THE COURT: You can stand up when I say we're adjourning for five minutes and that's a sign of great respect and then you can walk around if you like. It will be about a five minute break.

(Recess from 12:38 p.m. to 12:49 p.m.)

THE COURT: Be seated, please.

Mr. Miller started out the day talking in metaphors relating to recent meteorological and other events and I can't resist. After all, it isn't every week that you have an earthquake that rattles this building followed by a colossal storm threatening to flood Lower Manhattan followed by this

beautiful light summer day of relative but incomplete consensus. You can draw your own personal parallels to the seismic and weather patterns of this historic case. This hearing is the most significant achievement and I congratulate the many professionals including the multitude who labor without speaking roles for getting the case to this particular point.

The parties, not all of them, that are a remarkable cross-section of active and involved creditors have united in their support of a plan proposed by the debtors after the expiration of exclusivity that embodies a settlement and compromise of sharply conflicting views in relation to one particular issue; substantive consolidation, that if litigated will take an unpredictable long time, cost a great deal of money, and be a source of ongoing legal uncertainty.

The numbers are compelling. Parties holding in excess of one hundred billion dollars in claims have entered into plan support agreements. These are sophisticated parties who have made what seems to be a classic business decision based on the avoidance of cost and risk in the time value of money to move forward with a compromise that promises to yield prompt recoveries to all creditors of these estates. Only time will tell if this compromise plan in its current form or as it may be amended will be confirmed. The proponents and those creditors who have indicated their support for the plan are in

my judgment now entitled to move ahead with solicitation of acceptances in the rigorous process of endeavoring to satisfy the confirmation standards of the Code.

By any measure, disclosure here as the committee has observed, is abundant and adequate as to the issues in this too big to fail enterprise that are probably also too complicated to understand without a team of dedicated financial analysts.

The complexities are such that retail creditors are unlikely to read or fully comprehend the disclosures that have been made. And the sophisticated distressed investors have already gone through their own independent analysis, have plumbed the depths of the issues that concern them, and do not need more disclosure. Their needs can be satisfied by means of confirmation related discovery.

In the exercise of my discretion, having considered all of the objections carefully, I overrule them and I am prepared to enter an order approving the disclosure statement in the form proposed by the debtors with such tweaks and adjustments as I may make. For that reason, you're now in a position to submit an order and move ahead with preparations for confirmation with the confirmation hearing now having been set to begin on December 6.

Is there anything more?

MR. MILLER: No, Your Honor.

THE COURT: In that case, we're adjourned.

IN UNISON: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 12:54 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.

Aliza Chodoff

Digitally signed by Aliza Chodoff
DN: cn=Aliza Chodoff, o, ou, email=digital1@veritext.com, c=US
Date: 2011.08.31 14:40:59 -04'00'

ALIZA CHODOFF

Also transcribed by:

Ellen Kolman, AAERT Certified Electronic Transcriber CET**D-568

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 31, 2011